

Received on: 02.03.2020
Registered on: 02.03.2020
Decided on : 13.03.2026
Duration : 06 00 11
Y. M. D.

IN THE COURT OF 6th ADDITIONAL
DISTRICT JUDGE AHMEDABAD [RURAL] @ VIRAMGAM.

Regular Civil Appeal No.04 of 2020

Exh. : ____

APPELLANTS – (original plaintiffs)

(1) Bharatsinh Hanubha Solanki
(Legal heir of deceased Jashvantsang Agarsang,
s/o. Hanubha Jashvantsang)

(2) Legal heirs of deceased Jashvantsang Agarsang

(2/1) Ganpatsang Jashvantsang
(2/2) Vilasba Jashvantsang
(2/3) Deceased Hanubha Jashvantsang
(2/3/1) Lilaba Hanubha
(2/3/2) Baldevsang Hanubha
(2/3/3) Panvirsinh Hanubha

(3) Legal heirs of deceased Ishwarsang Rajaji

(3/1) Legal Heirs of deceased Popatsang Ishwarsang
(3/1/1) Vinubha Popatsang
(3/1/2) Ajitsinh Popatsang
(3/1/3) Virendrasinh Popatsang
(3/1/4) Gitaba Popatsang

(3/2) Anandsang Ishwarsang
(3/3) Janakba Ishawarsang
(3/4) Chandraba Ishwarsang

(4) Legal heirs of deceased Nathusang Bhavsang

(4/1) Legal Heir of Maniba Nathusang

w/o. Manbha Chhatrasang

(4/1/1) Gitaba Dashrathsinh

All R/o. : Ukaradi, Tal.: Mandal,

Dist.: Ahmedabad

V E R S U S

RESPONDENT – (original defendant)

Maruti Suzuki Ltd.

Add.: Plot No.1, Nelson Mandela Road,

Vasantkunj, New Delhi

Appearance

Learned Advocate Mr. P. D. Barot for the Appellant no.1.

Learned Advocate Mr. B. G. Dave for the respondent.

Subject : Appeal against the Judgment and decree dt.21.12.2019
passed in Reg. Civil Suit No.105/2016 by the Learned
Principal Civil Judge, Mandal.

J U D G M E N T

- 1) Being aggrieved and dis-satisfied by the Judgment and decree dt.31.12.2019 (hereinafter referred as impugned judgment) passed by Learned Principal Civil Judge, Mandal (hereinafter referred as Ld. Trial Court) in Regular Civil Suit No.105/2016 (hereinafter referred as the suit), the present appeal has been preferred by the appellant – original plaintiffs against the respondent who is original defendant. This court has called for the original record and proceedings of Regular Civil Suit No.105/2016 for the perusal.

2) The present appeal has been filed by the present appellant i.e. original plaintiff against the respondent who is original defendant in the suit. For the sake of convenience, the parties are addressed as they were addressed in the suit i. e. appellant as original plaintiff and the respondent as original defendant.

3) The case of the appellant in brief is that :

The present appellants are the original plaintiffs of RCS No.105/2016. The said suit was filed by the original plaintiffs for permanent injunction. The plaintiff Bharatsinh Hanubha is the legal heir of deceased Jasvantsang Agarsang and power of attorney holder of heirs of deceased owner of suit land i.e. Jasvantsang Agarsang, Ishwarsang Rajaji and Nathusang Bhavsang. It is submitted that plaintiffs have filed the suit for permanent injunction over the suit land bearing survey No.52, 54/2 and 63 (hereinafter referred as the suit property). The defendant had construct his temporary office, huts and put their materials on the land of plaintiffs. Therefore, the plaintiffs had issued a notice to the defendant through advocate but the defendant had not given proper reply of the notice. Therefore, the plaintiff had filed RCS No.87/2013 for temporary injunction on 26.04.2013 and the suit is transferred to Mandal Civil Court therefore, the suit is renumbered (new number) RCS No.105/2016. The trial court has dismissed the suit. Therefore, the appellants have filed present appeal. On 31.12.2019, the appellants had applied for

certified copies of judgment and decree. They got the same on 07.02.2020.

By filing present appeal, appellants submitted that the order passed by the trial court is barred by provisions of law. Further, the trial court has made misinterpretation of evidence of plaintiffs. Further, he has submitted that the appeal is within the limitation period. The judgment and decree passed by the trial court is unjust, improper, illegal and barred by settled principle of law. The trial court has considered only one side and passed its judgment.

Further, the suit land was cultivated by the appellants. At that time, the defendant had threatened them and falsely informed about the order of collector. The defendant had dumped their materials on the suit land without taking permission of plaintiffs. The plaintiffs had issued a notice to the defendant which was duly served to the defendant. The defendant had not given proper reply of that notice. Further, the names of the ancestors of the plaintiffs were mutated in revenue record vide entry no.78 which is produced on record vide Exh.80.

That the judgment passed by the trial court is perverse, contrary to the material on record, misread the evidence lead by the appellant and against the settled principles of law and therefore, the impugned judgment and order deserves to be quashed and set aside and the suit filed by the appellant deserves to be allowed. The Ld. Advocate of the appellant

has filed written arguments vide Exh.13 which is considered by this court.

- 4) Upon service of notice, the respondent appeared through his advocate and filed written submission vide Exh.22. He has submitted that present respondent is the original defendant of the suit. He has submitted that the appellant has filed present appeal for challenging the judgment and decree dated 31.12.2019 passed in RCS No.105/2016. It is submitted that the during year 1965 to 2006, The Ukardi Ganotiya Sahkari Kheti and Gopalak Mandali was recognized as agricultural tenant of the suit land vide order dated 13th March, 1965 passed by the Ld. Mamlatdar in Tenancy Case No.63/65. In view of this mutation entry, the name of Mandali continues to be reflected in the revenue record as possessor and owner from the year 1965 to 2006. It is submitted that the names of the ancestors of the plaintiffs has never been reflected in revenue record for the above mentioned period. Further, neither the plaintiffs nor their ancestors have ever challenged the right of Mandali for the aforesaid period.

Further, the present appellant had preferred an appeal before the Dy. Collector, Ahmedabad challenging the previous order passed by Mamlatdar. The Dy. Collector, Ahmedabad has dismissed the appeal on 16.04.2010 by giving reason that the appellants has preferred the appeal after a gross and unreasonable delay of 43 years. Thereafter, the appellants preferred a revision application before the Gujarat Revenue Tribunal challenging the order dated 16th

April, 2010. The said revision application was also dismissed by the Gujarat Revenue Tribunal on 13.04.2011.

The appellants filed a Special Civil Application No.13776 of 2012 before the Hon'ble High Court of Gujarat challenging order dated 13.04.2011. Thus application was also dismissed by the Hon'ble High Court.

So, it is clear that the appellants have remained unsuccessful in disputing the rights, title and interest of Mandali and all the subsequent buyers of the suit land.

Further, it is submitted that the Hon'ble Trial Court has concluded that the appellants have no locus standi to file RCS No.105/2016. The appellants have failed to prove that they are the owners and occupiers of the suit property. The respondent has proved that the suit is bad for non-joinder of parties. The respondent is able to prove that the respondent is a lawful bona fide purchaser, owner and possessor of land bearing survey no.52/4 and 54/2 situated at village Ugharojpura, Tal.:Mandal, Dist. Ahmedabad. The civil suit is time barred. Therefore, the appellants have failed to prove that they are the owners and occupiers of the suit land.

It is submitted that the Trial Court has duly concluded that the appellants are not owners and occupiers of the suit land. The claims of the appellants over the suit land is based on mutation entry No.78 dated 21.08.1963.

Further, the appellants has admitted that Ukardi Mandli has sold part of the subject land i.e. old survey No.54/2 to Amrutbhai Lavjibhai Chaudhary and others vide

registered sale-deed bearing number 655 on 04.05.2006 and the same is recorded in the revenue record of old survey no.52/1 paiki vide mutation entry no.609 dated 16.05.2006 i.e. Exh.69. Thereafter, old survey no.54/2 was sold by Amrutbhai Lavjibhai Chaudhary and others to Rishikesh Mahendra Prajapati and other vide registered sale-deed bearing no.784 dated 08.05.2009. This is mutated vide entry no.775 on 01.07.2009 which is produced on record vide Exh.72. Thereafter, old survey no.54/2 was sold by Rishikesh Mahendra Prajapati and other in favour of Rakeshbhai Gangaram Mali and others vide registered sale-deed bearing no.2783 dated 29.06.2010. This is mutated vide entry no.865 on 01.07.2009 which is produced on record vide Exh.76. Thereafter, old survey no.54/2 was sold by Rakeshbhai Gangaram Mali and others in favour of Sankabhai Keshavbhai Patel and others vide registered sale-deed bearing no.410 dated 29.05.2012. This is mutated vide entry no.1083 on 29.05.2012 which is produced on record vide Exh.74. Thereafter, old survey no.54/2 was sold by Sankabhai Keshavbhai Patel and others in favour of the present respondent vide registered sale-deed bearing no.959 dated 18.11.2013. This is mutated vide entry no.1193 on 03.12.2013.

It is submitted that the trial court has concluded that the appellants are neither in possession of the suit land nor are owners of the suit land. Despite, the suit land having been sold between different parties at different points of time, the

appellants have not taken any steps to protect their right, title and interest in the suit land.

It is further submitted that the appellants in RCS 105/2016 has remained unaware about the transactions and facts pertaining to the suit land since 1963 and has thereafter preferred RCS no.105/2016 which is after 53 years.

He has submitted that the Ld. Trial court has legally decided all the issues. Further, the trial court has passed legal, just and proper judgment. The trial court has not committed any error of law while passing the said judgment. Further, the present appellants has filed appeal to mislead the court. Therefore, the order passed by the Ld. Trial Court is correct. Therefore, present appeal be liable to be dismissed.

5) **ISSUES BEFORE THE TRIAL COURT**

From the above submissions of the litigating parties, following issues were framed by the Learned Trial Court at Exh.26, which are as under:

1. Whether the plaintiff proves that they are the owners and occupiers of the suit property?
2. Whether the defendant proves that the suit is bad for non-joinder of parties?
3. Whether the plaintiffs are entitled to get any relief as prayed for?
4. What order and decree?

The trial Court has answered above issues as follows :

- (1) In Negative.
- (2) In Affirmative.
- (3) In Negative.
- (4) As per final order.

EVIDENCE BEFORE THE TRIAL COURT

The parties, during the course of trial have produced oral as well as documentary evidence before the Trial Court as under:

Oral evidence of plaintiff

EXH	PARTICULARS
34	Affidavit of examination-in-chief of the plaintiff

Documentary evidences of plaintiff

EXH	PARTICULARS
62	Certified copy of revenue form no.7/12 of survey no.53
63	Certified copy of revenue form no.8A of account no.158
64	Copy of revenue form No.6 of Mutation entry no.1125
65	Copy of revenue form no.7/12 of survey No.52
66	Copy of revenue form no.7/12 of survey no.54/2
67	Copy of revenue form no.7/12 of survey no.63
68	Copy of entry of sale no.610
69	Copy of entry of sale no.609
70	Copy of entry of sale no.608
71	Copy of entry of sale no.868

72	Copy of entry of sale no.775
73	Copy of entry of sale no.871
74	Copy of entry of sale no.1083
75	Copy of entry of sale no.1084
76	Copy of entry of sale no.865
77	Certified copy of entry no.Janim/Ugharojpura/Sit/Vashi/17 dated 29.12.2017
79	Certified copy of order dated 09.08.2016 of Collector, Ahmedabad
80	Certified copy of entry no.78
81	Copy of withdraw pursis of SPCS No.22/08

6) **CONCLUSION OF SUIT BY TRIAL COURT**

The Learned Trial Judge after considering the evidences on record of both the sides and relying on the arguments advanced by their Advocates has allowed the suit on 31.12.2019 vide Exh.58.

- 7) I have gone through the pleadings of the parties in the suit proceeding and have also gone through the evidences produced on record of trial court and the judgment and decree passed by the Trial Court whereby the trial court has allowed the suit of the plaintiff. On the basis of the aforesaid

contentions and submission following points of determination arise for a just decision of present petition :

1. Whether the appellant proves that the Trial Court has not properly appreciated the facts on record and its judgment and decree is based upon the assumptions of facts or the facts against the record or by misinterpretation of legal provisions and is erroneous/perverse and needs interference of this court ?
 2. What order ?
- 9) My findings on the above points are as under with reasons.
- (1) In the Negative.
 - (2) As per final order.

REASONS

- 10) Before entering into the merits of the matter, it is proper to discuss the scope and ambit of Appeal U/s. 96 of Cr.P.C. under which this petition has been filed. In this regard the Hon'ble Supreme Court has laid down principles in following citations:

2015 0 AIR(SC) 1139; Shasidhar & Others VERSUS Smt. Ashwini Uma Mathad & Anr. (a) Code of Civil Procedure, 1908 – Section 96 r/w Order XLI rules 31 – First appeal – First appellate court being the final court of fact, is duty bound to consider all pleadings, arguments and evidence independently – Instantly, High Court not dealing

with any submissions urged by appellants and/or respondents, nor taking note of grounds taken by the appellants or cross objections filed by plaintiffs under Order XLI Rule 22 – Not making any attempt to appreciate evidence adduced by parties – No finding as to whether judgment of trial Court was sustainable or not and if so, how, and if not, why? – Impugned judgment not sustainable. (Para 23, 25)

2017 1 JLJR(SC) 167; 2016 12 Scale 902; 2017 2 SCC 415; LALITESHWAR PRASAD SINGH & ORS. Versus S.P. SRIVASTAVA (D) THR. LRS. (b) Code of Civil Procedure, 1908 – Section 96 – First appeal – Appellate court is the final court of facts – Its judgment must reflect application of mind by recording its findings supported by reasons – The first appellate court, while reversing the findings of the trial court, must record its findings in clear terms explaining how the reasoning of the trial court is erroneous. (Para 12, 13)

Thus, the scope of interfering with the order of the Trial Court in appeal is well established and this court can interfere only if the Trial Court has ignored any important evidence or has wrongly appreciated the evidence on record or there is patent defect in the order or there is an error of jurisdiction or law or the Trial Court has arrived at findings on assumptions of facts which are not on record.

From the principles laid down in above judgment, it is also clear that this Appellate Court must apply its mind to the facts/evidences produced on the record of the Trial Court.

- 11) Upon consideration of the evidence led before Ld. Trial Court and after considering the submission made on behalf of either sides, the Ld. Trial Court discussed the issued and answered issue no.1 in negative, issue No.2 in Affirmative, issue no.3 in negative and answer issue No.4 passed the final order allowing the suit.
- 12) Upon perusal of oral and documentary evidence led before the Trial Court, it is apparent that the trial court has discussed all issues together. From the evidence on record, looking to the Exh.34, examination-in-chief of plaintiff, he has deposed that present suit has been filed for the property survey No.52, 54/2 and 63. He has deposed that defendant company has no concerned with the property survey no.63. He deposed that he has no knowledge about the details of revenue form no.6. He deposed that the name of Ishwarsing Rajaji and others were mutated vide entry No.81 dated 21.08.1963. He deposed that firstly, he came to know about the conflicts regarding suit property in year 2013. Further, before year 2013, other case had been filed for the suit land in the year 2008. He also deposed that on 14.05.1965, an appeal has been filed against the order passed by the Agricultural Land Tribunal. The said appeal was rejected on 16.04.2010.

Thereafter, an appeal No.377/2010 had been filed in Gujarat Revenue Tribunal. The said appeal was rejected on 13.04.2011. Against that order a Spl. C. A. No.13776/2012 had been filed before the Hon'ble High Court. He further deposed that mandali had executed sale-deed No.655 and 656 of the land in favour of Amratbhai Lavjibhai Chaudhary and others. The entries of the said sale-deeds have been mutated vide entry No.609 and 610 on 16.05.2006. He also deposed that at present the possession of the suit property is with defendant. Earlier, the plaintiff has filed RCS No.92/2016 for only injunction and the plaintiff has not challenged any documents produced by the defendant. He deposed that the present suit is for injunction. He further deposed that he has not challenged the sale-deed which has been executed in favour of the defendant.

Looking to the documentary evidence on record, it is clear that the plaintiff has filed the plaint for Survey No.52, 54/2 and 63 of Udhrojpur. Further, the plaintiff himself has specifically mentioned in his deposition that the defendant has not purchased survey No.63. Further, the plaintiff has no knowledge about the mutation entries of the above stated survey numbers in revenue record. Also, he does not know about the name of the Government has been mutated or not in revenue record for survey No.54/2 vide entry No.14 dated 09.02.1954. He also does not know regarding the entry No.22 dated 01.08.1956 and vide that entry Narottambhai Lalbhai, Arvindbhai Narottambhai and Niranjambhai

Narottambhai became owner of the said land. Further, the plaintiff has mentioned that the name of Ishwarsinh and others were entered in revenue record vide entry No.78 dated 21.08.1963 through order below RTS No.837. But the plaintiff has no knowledge that after 21.08.1963, The Ukardi Ganotiya Cooperative Agriculture and Gopalak Mandli had place an application to purchase the said land vide Tenancy Case No.63/1965 and mandali had executed sale-deed No.655 and 656 of the land in favour of Amratbhai Lavjibhai Chaudhary and others. The entries of the said sale-deeds have been mutated vide entry No.609 and 610 on 16.05.2006.

Looking to the Exh.62, the revenue form No.7 of Khata No.53, the name of the Sardar Sarovar Rehabilitation Agency, Ahmedabad has mentioned.

From Exh.63 revenue form No.8A of Khata No.158, it transpires that many survey numbers are mentioned in it and its measure other than survey No.52,54/2 and 63. All the survey numbers which mentioned in Exh.63 are in the name of Sardar Sarovar Rehabilitation Agency, Ahmedabad. However, the defendant has mentioned that they are in possession of the land bearing survey No.52/1 and 54/2 which is purchased by them from M/s. Samras Organizers and survey No.53 was allotted by the Government for industrial purpose.

From Exh.64- revenue form No.6 record of right, it transpires that survey no.53 is allotted to the defendant vide

order of the District Collector, Ahmedabad. Further, from the Exh.65, revenue form no.7/12 for year 1957-58 to 1962-63, it transpires that vide entry no.78, Ishwarsang Hathiji and others are shown as possessor of the survey No.52 and also, Naranbhai Rupabhai is shown as administrator of Ukardi Ganotiya Sarkari Kheti and Gopalak Mandali.

From Exh.66 & 67 revenue form No.7/12 of survey No.54 paiki 2 and 63, it transpires that the said land is a government waste land and in the said revenue form Narottambhai Lalbhai, Arvinbhai Narottambhai and Niranjambhai Narottambhai are shown as possessor vide entry No.22. In the said revenue form vide entry no.78 name of Ishwarsang Rajaji, Jaswantsang Agarsang and Nathusang Bhavsang are mentioned. Also, vide entry No.176, name of Naranbhai Roopabhai who was administrator of Ukardi Ganotiya Cooperative Agricultural and Gopalak Mandali is mentioned.

From Exh.68, 69 and 70, revenue form no.6, it transpires that survey No.52/1 paiki land ad-measuring 32-93-51 Hc.Are.Sq.Mtr., survey No.54/2 land ad-measuring 39-25-47 Hc.Are.Sq.Mtr. and survey No.63 land ad-measuring 1-79-07 Hc.Are.Sq.Mtr. which shows that vendor The Ukardi Ganotiya Sarkari Kheti and Gopalak Mandali had sold the said land to Amrutbhai Lavjibhai Chaudhry and others vide registered sale-deed No.656, 655, 657 dated 04.05.2006 accordingly.

From Exh.71 village form No.6 of survey No.52/1 it transpires that land ad-measuring 31.1686 Hc.Are.Sq.Mtr. was sold by Amrutbhai Chaudhary and others to Gangaram Hemtaji Mali and others by executing registered sale-deed 3056 on 14.07.2010.

From Exh.72 village form No.6 of survey No.54/2 it transpires that land ad-measuring 39-25-47 Hc.Are.Sq.Mtr. was sold by Amrutbhai Chaudhary and others to Rishikesh Mahendra Prajapati and others by executing registered sale-deed 745 on 05.05.2009.

From Exh.73 village form No.6 of survey No.63 it transpires that land ad-measuring 1-79-07 Hc.Are.Sq.Mtr. was sold by Amrutbhai Chaudhary and others to Seema Gangaram Mali and others by executing registered sale-deed 3060 on 14.07.2010.

From Exh.74 village form No.6 of survey No.54/2 it transpires that land ad-measuring 39.2547 Hc.Are.Sq.Mtr. was sold by Rakesh Gangaram Malli and others to Sankabhai @ Sankalbhai Keshavlal Patel and others by executing registered sale-deed 410 on 29.05.2012.

From Exh.75 village form No.6 of survey No.52/1 it transpires that land ad-measuring 31.1686 Hc.Are.Sq.Mtr. was sold by Pravin Ishwarji Mali and others to Sankabhai @ Sankalbhai Keshavlal Patel and others by executing registered sale-deed 414/2012 on 30.05.2012.

From Exh.76 village form No.6 of survey No.54/2 it transpires that land ad-measuring 29-25-47 Hc.Are.Sq.Mtr.

was sold by Rishikesh Mahendra Prajapati and others to Rakeshbhai Gangaram Mali and others by executing registered sale-deed 2783/2010 on 29.06.2010.

- 13) From the above documentary evidence and discussion, it is clear that plaintiff is neither the possessor nor the owner of the suit properties as well as not prayed for declaration regarding ownership of suit property. Further, it is clear from the Exh.74, revenue form No.6 that Rakesh Gangaram Mali and others has sold the land survey no.54/2 paiki land ad-measuring 39.2547 Hc.Are.Sq.Mtr. to Sankabhai @ Sankalbhai Keshavlal Patel and others vide registered sale-deed no.410/2012 on 29.05.2012. Further, it is clear from the Exh.75, revenue form No.6 that Pravin Ishwarji Mali and others has sold the land survey no.52/1 paiki land ad-measuring 31.1686 Hc.Are.Sq.Mtr. to Sankabhai @ Sankalbhai Keshavlal Patel and others vide registered sale-deed no.414/2012 on 30.05.2012. The original defendant had purchased survey No.52/1 and 54/2 from Sankalbhai Keshavlal Patel vide registered sale-deed no.958 and 959 on 16.11.2013.

Further, from the other documentary evidence produced on record vide Exh.66, 67, 68, 69 & 70, it is transpires that plaintiff has no right, possession or ownership over the suit land. Further, the defendant has not produced any documentary evidence though it is clear that he is a legal owner, purchaser and possessor of the suit land survey

No.52/1 and 54/2. Further, the defendant has proved that he has no concerned with land survey No.63.

Further, the plaintiff has stated that he came to know about the order of case No.63/1965 in the year November-2010 and against that order the Dy. Collector had rejected the appeal. Also, against the order of Dy. Collector, Revenue Tribunal has rejected the application. Against the order of Revenue Tribunal an application is pending before the Hon'ble High Court. Earlier, the plaintiff has filed RCS No.176/2012 before Viramgam Court afterwards which was transferred to the Mandal Court and it is renumbered as RCS no.92/2016. Thereafter, SPCS No.22/2008 was filed, therefore, the present suit is time barred. Therefore, the suit of the plaintiff is barred by law of limitations. Further, the plaintiff has not joined all the purchaser of all sale-deeds mentioned by the defendant. Further, looking to the evidence of the plaintiff, it transpires that the original defendant is not the first purchaser. Therefore, the suit is also barred by non-joinder of parties. But looking to the issue no.2 which has to be proved by the defendant through his evidence, the defendant failed to produced evidence in the original suit. Thus, looking to the above all the discussion regarding the issues, the trial court has rightfully held the issue no.1 & 3 in negative and for issue no.2 from the above discussion this court has answered in negative

Thus, considering the above facts and circumstances, it is clear that the trial court has properly appreciated the evidence on record to arrive at its findings to the issues and has not committed any error in holding that plaintiff has failed to prove his case and hence the same requires no interference of this court therefore, my finding to point no.1 is In Negative. Under the facts and circumstances discussed herein above, I pass following order in interest of justice for point no. 2 :

-: O R D E R :-

1. The present appeal is hereby dismissed.
2. The judgment dated 31.12.2019 and decree dt.04.01.2020 passed by Learned Principal Civil Judge, Mandal in Regular Civil Suit No.105/2016 (old RCS No.87/2013) is hereby confirmed by this order.
3. The parties of this appeal do bear their own costs.
4. Decree be drawn accordingly.
5. The record and proceeding of the Trial Court along with copy of this judgment be remitted back immediately.

Signed and pronounced in the open Court on 13th day of March, 2026.

Date : 13/03/2026
Place : Viramgam.

[H. A. Upadhyay]
6th Additional Sessions Judge,
Ahmedabad [Rural] at Viramgam.
[UIC No. GJ00635]